

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 05-1849 JH
	)	
DENNIS WILSON, et al.,	)	
	)	
Defendants.	)	

UNITED STATES' RESPONSE TO DEFENDANT WILSON'S  
"MOTION AND SUPPORTING MEMORANDUM TO EXCLUDE THE  
ADMISSIBILITY OF CO-CONSPIRATOR STATEMENTS" (DOC. 725)

COMES NOW the United States of America, by and through David C. Iglesias,  
United States Attorney for the District of New Mexico, and James R.W. Braun, Assistant  
United States Attorney for said District, and hereby responds to defendant Dennis  
Wilson's "Motion and Supporting Memorandum to Exclude the Admissibility of Co-  
Conspirator Statements" (Doc. 725) as follows:

1. As noted in defendant Dakota Fitzner's motion regarding co-conspirator  
statements (Doc. 730) and defendant Greg Hill's amended unopposed motion regarding  
co-conspirator statements (Doc. 735), the United States does not oppose holding a pretrial  
hearing to determine the admissibility of co-conspirator statements in this case and agrees  
to submit a list of the statements that it intends to introduce at trial two weeks prior to  
such a hearing.

2. Defendant Wilson's assertion that any co-conspirator statement where the declarant is unavailable should be excluded under *Crawford v. Washington*, 541 U.S. 36 (2004), is incorrect. Because co-conspirator statements are non-testimonial, *Crawford* does not bar their admission at trial. *United States v. Delgado*, 401 F.3d 290, 299 (5<sup>th</sup> Cir. 2005); *United States v. Hendricks*, 395 F.3d 173, 182-84 (3<sup>rd</sup> Cir. 2005); *United States v. Reyes*, 362 F.3d 536, 540-41 (8<sup>th</sup> Cir. 2004).

Respectfully submitted,

DAVID C. IGLESIAS  
United States Attorney

/s/ James R.W. Braun

JAMES R.W. BRAUN  
Assistant U.S. Attorney  
P.O. Box 607  
Albuquerque, NM 87103  
(505) 346-7274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed on this 7<sup>th</sup> day of November to Robert Gorence, attorney for Dennis Wilson, and to Joe Romero, Jr., and Jody Neal-Post, attorneys for Dana Jarvis (Notice of Joinder, Doc. 741).

/s/ James R.W. Braun

JAMES R.W. BRAUN  
Assistant U.S. Attorney